

Stark County Planning and Zoning Commission Minutes

**December 22, 2015
10:00 am**

Chairman Russ Hoff called the meeting of the Stark County Planning and Zoning Commission to order. Chairman Hoff, Klayton Oltmanns, Duane Grundhauser, Kurt Froelich, Larry Messer, Gene Jackson, Sue Larsen and Jay Elkin present. Also present were County Planner Steve Josephson, States Attorney Tom Henning and Nicole Roberts of the Auditor's office.

Klayton Oltmanns moved to approve the minutes from the November 24, 2015 meeting. Duane Grundhauser seconded. All voted Aye and motion carried.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for wind energy facilities, including an electrical substation, on parcels located in Sections 35 and 36 of Township 138, Range 95, Sections 1, 11, 12, 14,15,16, 21,22,23, 24, 27, 28,29, 31,32,33 and 34 of Township 137, Range 95, Sections 25, 26, 29, 30, 31, 35 and 36 of Township 137, Range 96 and Sections 25, 26, 27,28, 32, 33,34,35, and 36 of Township 137, Range 97 on approximately 17,665.01 acres.

Chairman Hoff asked for anyone to speak for or against the Conditional Use Permit. Terry Reichert, John Wert, Pat Praus, Doug Tarpo, and Craig Kubas all voiced their concerns about view, health, property values, sound, and flicker flash. Mike Schoch voiced his concern on the health effects it would impose on his ill daughter. Mike Branenberg, Rose Hafes, Leland Brand, Steve Tomac, Jason Zering, Wayne Backman, Chase Dauenhauer, Glen Olberg, Don Beshner, Donna Ritter, Elvin Kaufman, Janice Gjerman, Ruth Steier all spoke in favor of the conditional use permit for wind energy facilities. Chairman Hoff closed the public hearing.

Klayton Oltmanns moved to recommend to the Stark County Board of Commissioners the approval for a conditional use permit for wind energy facilities, including an electrical substation, on parcels located in Sections 35 and 36 of Township 138, Range 95, Sections 1, 11, 12, 14,15,16, 21,22,23, 24, 27, 28,29, 31,32,33 and 34 of Township 137, Range 95, Sections 25, 26, 29, 30, 31, 35 and 36 of Township 137, Range 96 and Sections 25, 26, 27,28, 32, 33,34,35, and 36 of Township 137, Range 97 on approximately 17,665.01 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Sue Larsen seconded. Roll call vote. All voted aye except for Chairman Russ Hoff, Jay Elkin and Gene Jackson who voted nay and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing agricultural uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
 - a. **Development shall be limited to a maximum of 87 wind turbines, an electrical substation, and an operation and maintenance building as well as any required infrastructure.**

- b. Development shall be in accordance with the application material dated October 27, 2015.
- c. The location of the wind turbines shall be as generally shown on the drawings dated October 27, 2015. Any significant change to the location of the turbines and/or the addition of turbines shall require approval by the County Commission.
- d. The maximum turbine height shall be 431 feet. The maximum ground clearance for each turbine blade tip shall be 90 feet.
- e. The maximum square footage of the operations and maintenance building (O&M) shall be 7,500 square feet. The exterior of the O&M building shall use materials, colors, and textures that will blend the building into the natural setting and existing environment.
- f. The laydown yard and storage area will only be utilized during the construction phase of the project. The laydown yard and storage areas shall be restored by the developer within 180 days after the end of the construction phase.
- g. Development of wind energy facilities shall be performed in accordance with Chapter 6.19 of the Stark County Zoning Ordinance as adopted on October 2, 2012 as well as with all applicable County, State and Federal rules and regulations.
- h. The developer shall be responsible for all maintenance associated with the turbines and private roads accessing the turbines during the operation of the project.
- i. The developer shall enter into a road maintenance agreement with the Stark County Road Department to ensure that all County roads shall be repaired or restored to a condition at least equal to the road condition prior to construction of the project.
- j. Prior to the project's development, the developer shall contact the County Road Superintendent and request an inspection of the haul routes.
- k. The developer shall contact the County Road Superintendent no later than November 1 of each year to request a subsequent inspection of the haul routes.
- l. The developer shall be responsible for dust control along the haul routes.
- m. The developer shall work in concert with law enforcement and emergency responders to facilitate public safety. This includes the provision of additional special rescue equipment and training necessary to accommodate high-angle rescues if necessary for law enforcement and emergency responders.
- n. Upon approval of the siting permit by the State of North Dakota Public Service Commission, the applicant shall post a bond, a letter of credit, or a parent guarantee for restoration of property in an amount as determined by the County Commission. The bond shall be posted and received by Stark County prior to the issuance of building permits for structures that are part of the approved wind energy facility;
- o. Building permits for structures that are part of the wind energy facility will be issued only after the following documents have been submitted to Stark County:
 - a. determinations of no hazard issued by the Federal Aviation Administration (FAA) based upon the final turbine array;
 - b. proof of approval of a siting permit by the North Dakota Public Service Commission;
 - c. a copy of the signed decommissioning and restoration bond agreement with the State of North Dakota;
 - d. a signed road maintenance agreement with Stark County;
 - e. evidence that a wind energy facility map identifying wind turbine locations and numbers have been filed with local fire departments, law enforcement, and county emergency managers;
 - f. a plan with dates for meetings with law enforcement and emergency responders and provisions of special rescue equipment and training necessary to accommodate high-angle rescue; and

- g. A summary of anticipated decibel output of each wind turbine.
- p. Within 90 days of wind energy facility construction, the developer shall submit to the Zoning Administrator an updated and final USGS topographical map; or survey if available, demonstrating actual compliance with the requirement and conditions of this conditional use permit.
- q. The developer shall report to the Zoning Administrator should the termination or abandonment of leases or easements for the wind energy facilities occur. Reclamation of the sites shall be completed within 180 days of termination or abandonment of leases or easements.
- r. Any proposed change of the conditional use permit, including location of the facility, shall require a hearing before the Stark County Planning and Zoning Board and approval from the Stark County Commission.
- s. The permit may be revoked by the County Commission anytime the applicant is in non-compliance with any of the conditions set by the Planning and Zoning Board or the County Commission for the issuance of the permit.

The subject properties are currently zoned Agriculture. As the surrounding area is largely undeveloped and appears to be in agricultural use, and as no wind turbines are proposed within one mile of the jurisdictional limits of any incorporated cities, the proposed conditional use is consistent with the following objectives of The Stark County Comprehensive Plan:

- **LAND USE-Avoid conflict between land uses.**
- **LAND USE- Ensure orderly and desirable energy development.**

The proposed conditional use permit is consistent with the following implementation strategies in the Stark County Comprehensive Plan:

- **GOVERNMENTAL-Stark County supports coordination with state, federal and regional agencies and companies and associations involved in energy development to ensure appropriate planning.**
- **NATURAL RESOURCES-Stark County supports proper planning for impacts resulting from, coal, oil, natural gas, wind, uranium, or other natural resource development.**

Jay Elkin moved to recess the Planning and Zoning Commission meeting until the conclusion of the Stark County Commission meeting scheduled for 10:00 am that morning.

Klayton Oltmanns seconded. Roll call vote. All voted Aye and the motion carried.

The Planning and Zoning Commission meeting resumed shortly after the adjournment of the County Commission meeting.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for a 197 foot meteorological tower on a parcel located in the E ½ of the W ½ of Section 32, Township 137, Range 97 containing approximately 160 acres on a lease area of approximately 2.5 acres.

Chairman Hoff asked for anyone to speak for or against the Conditional Use Permit. Craig Kubas suggested postponing the remaining items to allow time to digest the approval of the wind energy facilities. Chairman Hoff closed the public hearing.

Klayton Oltmanns moved to recommend to the Stark County Board of Commissioners the approval for a conditional use permit for a 197 foot meteorological tower on a parcel located in the E ½ of the W ½ of Section 32, Township 137, Range 97 containing approximately 160 acres on a lease area of approximately 2.5 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Duane Grundhauser seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

- 1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and**
- 2. The conditional use shall be limited through the inclusion of the following conditions:**
 - a. Development shall be limited to a guy-wired meteorological tower (MET) to be used to be used to monitor and collect wind data;**
 - b. No outdoor storage shall be allowed on site;**
 - c. The maximum height of the MET shall be limited to 197 feet;**
 - d. The location of the MET shall be as generally shown on the drawing dated September 2, 2015;**
 - e. The duration of the conditional use permit shall be three and one-half years;**
 - f. The developer shall be responsible for all maintenance associated with the MET; and guys, and the driveways/roads accessing the tower;**
 - g. The developer shall provide a six-foot chain link fence around the MET and baseplate;**
 - h. Unless required by the Federal Aviation Authority, the MET shall not be lighted;**
 - i. If necessary, the developer, prior to construction, shall submit a letter from the Federal Aviation Administration (FAA) stating that the MET does not exceed the maximum height permitted under FAA rules and does not require lighting;**
 - j. Any proposed change of use of the MET, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission; and**
 - k. Development of the MET shall be performed in accordance with all applicable County, State and Federal rules and regulations.**
 - l. The applicant shall report to the Zoning Administrator if the tower is no longer in use. The tower shall be removed, at the applicant's expense, within six (6) months of this notice and the site shall be restored by the applicant to its pre-existing condition.**

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a zoning change from Agriculture to Agricultural Residential on a parcel located in the NW 1/4 of Section 25, Township 137, Range 96 containing approximately 13 acres.

Chairman Hoff asked for anyone to speak for or against the zoning change. Chairman Hoff closed the public hearing.

Duane Grundhauser moved to recommend to the Stark County Board of Commissioners the approval of the zoning change from Agriculture to Agricultural Residential on a parcel located in the NW 1/4 of Section 25, Township 137, Range 96 containing approximately 13 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Sue Larsen seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed rezoning based upon the following finding:

- The proposed rezoning is consistent with the development pattern in the vicinity.

The request is consistent with the following objectives of the Stark County Comprehensive Plan:

- LAND USE-Strive to protect the agricultural integrity of rural areas; and
- LAND USE-Avoid conflicts between land uses.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for a 190 foot microwave tower on a parcel located in the NW ¼ of Section 25, Township 137, Range 96 containing approximately 13 acres.

Chairman Hoff asked for anyone to speak for or against the zoning change. Chairman Hoff closed the public hearing.

Klayton Oltmanns moved to recommend to the Stark County Board of Commissioners the approval of the conditional use permit for a 190 foot microwave tower on a parcel located in the NW ¼ of Section 25, Township 137, Range 96 containing approximately 13 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Larry Messer seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
 - a. Development shall be limited to a lattice microwave tower to support a wind energy facilities;
 - b. The maximum height of the radio tower shall be limited to 190 feet;
 - c. The location of the tower shall be as generally shown on the drawings dated October 19, 2015 and received as part of the application dated October 30, 2015;
 - d. The developer shall be responsible for all maintenance associated with the tower;
 - e. The developer shall provide a six-foot chain link fence around the perimeter of the pad;

- f. Prior to construction, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the tower does not exceed the maximum height permitted under FAA rules;**
- g. Any proposed change of use of the tower, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission; and**
- h. Development of the microwave tower shall be performed in accordance with all applicable County, State and Federal rules and regulations.**
- i. The applicant shall report to the Zoning Administrator if the tower is no longer in use. The tower shall be removed, at the applicant's expense, within six (6) months of his notice and the site shall be restored by the applicant to its pre-existing condition.**

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for a 263 foot lattice meteorological tower on a parcel located in the NE ¼ of the SW ¼ and Lots 1, 2, and 3, Section 30, Township 137, Range 96 containing approximately 149.65 acres on a lease area of approximately 3.191 acres.

Chairman Hoff asked for anyone to speak for or against the conditional use permit. Craig Kubas spoke against the conditional use permit. Bob Zent voiced his concerns about the air space with the airport. Chairman Hoff closed the public hearing.

Sue Larsen moved to recommend to the Stark County Board of Commissioners the approval of the conditional use permit for a 263 foot lattice meteorological tower on a parcel located in the NE ¼ of the SW ¼ and Lots 1, 2, and 3, Section 30, Township 137, Range 96 containing approximately 149.65 acres on a lease area of approximately 3.191 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Duane Grundhauser seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

- 1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and**
- 2. The conditional use shall be limited through the inclusion of the following conditions:**
 - a. Development shall be limited to a lattice meteorological tower to support a wind energy facility**
 - b. The maximum height of the meteorological tower shall be limited to 263 feet;**
 - c. The location of the tower shall be as generally shown on the drawings dated October 23, 2015 and received as part of the application received on October 30, 2015;**
 - d. The developer shall be responsible for all maintenance associated with the tower;**
 - e. The developer shall provide a six-foot chain link fence around the perimeter of the pad;**
 - f. Prior to construction, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the tower does not exceed the maximum height permitted under FAA rules;**

- g. Any proposed change of use of the tower, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission;**
- h. Development of the tower shall be performed in accordance with all applicable County, State and Federal rules and regulations; and**
- i. The applicant shall report to the Zoning Administrator if the tower is no longer in use. The tower shall be removed, at the applicant's expense, within six (6) months of this notice and the site shall be restored by the applicant to its pre-existing condition.**

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a zoning change from Agriculture to Agricultural Residential on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres.

Chairman Hoff asked for anyone to speak for or against the zoning change from Agriculture to Agricultural Residential. Chairman Hoff closed the public hearing.

Duane Grundhauser moved to recommend to the Stark County Board of Commissioners the approval of the zoning change from Agriculture to Agricultural Residential on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Klayton Oltmanns seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed rezoning based upon the following finding:

- The proposed rezoning is consistent with the development pattern in the vicinity.

The request is consistent with the following objectives of the Stark County Comprehensive Plan:

- LAND USE-Strive to protect the agricultural integrity of rural areas; and
- LAND USE-Avoid conflicts between land uses.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a Conditional Use Permit for an electrical substation and accessory buildings on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres.

Chairman Hoff asked for anyone to speak for or against the Conditional Use Permit for an electrical substation and accessory buildings on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources. Chairman Hoff closed the public hearing.

Larry Messer moved to recommend to the Stark County Board of Commissioners the approval

Klayton Oltmanns seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

- 1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and**
- 2. The conditional use shall be limited through the inclusion of the following conditions:**
 - a. Development shall be limited to an electric substation/switch yard to support a wind energy facility;**
 - b. The location of the substation/switch yard shall be as generally shown on the drawings dated August 7, 2015 received as part of the application dated October 30, 2015;**
 - c. The developer shall be responsible for all maintenance associated with the substation/switch yard;**
 - d. The developer shall provide a six-foot chain link fence around the perimeter of the substation;**
 - e. Prior to construction, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the substation does not exceed the maximum height permitted under FAA rules;**
 - f. Any proposed change of use of the electric substation/switch yard, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission; and**
 - g. Development of the electrical substation/switch yard shall be performed in accordance with all applicable County, State and Federal rules and regulations.**

Klayton Oltmanns moved to adjourn, Duane Grundhauser seconded.